IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Jagdish Prasad.

VERSUS

Civil Judge (J.D.), Sardar Shahar & others.

(S.B. Civil Writ Petition No.984/2005)

DATE OF ORDER ::: FEBRUARY 17, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Vikas Balia) for the petitioner.
Mr. Sachin Acharya)

BY THE COURT :

REPORTABLE

Heard learned counsel for the petitioner.

According to the learned counsel for the petitioner, a suit no.21/77 filed by Panna Lal & others against Heera Ram & others for declaration and possession was decreed on 11.10.1984. According to the petitioner, the land is not falling within the boundary specified in the decree for which the decree for possession was passed by the trial court.

On 13.12.2004, the Assistant Nazir of the executing court, in pursuance of the directions of the

executing court, came to the petitioner's house and put the locks on the main door. It is submitted that the petitioner was neither party in the original suit nor was made party in execution proceedings nor any application was moved by the decree holder to dispossess the petitioner from the property. When the house of the petitioner was locked, the petitioner submitted an application under Section 151 C.P.C. narrating all facts and prayed that the petitioner's property is not falling in the property specified in the decree-sheet and, therefore, Commissioner may be appointed to take measurement and to open lock forthwith. The executing court appointed Commissioner to give report with respect to the property of the petitioner. The Commissioner submitted his report and according to the petitioner, by this report, it become clear that some part of the house of petitioner falls outside the land specified in the decree sheet. The trial court after hearing arguments on the application under Section 151 C.P.C. rejected the same on the ground that the petitioner should file appropriate proceedings and no relief can be granted under Section 151 C.P.C. to the petitioner. This order was passed on 20.12.2004. On 11.1.2005, the executing court passed the order directing the local administration, municipal authorities and police to assist for execution of possession warrant. The executing court fixed the execution case on 22.2.2005.

In the above circumstances, the petitioner submitted an objection petition under Order 21 Rule 99 & 101 read with Section 151 C.P.C. on 11.1.2005 before the executing court. The petitioner's objection petition was registered as Misc. Case No.4/2005. The petitioner also submitted an application seeking stay of execution. This application appears to have been submitted on 24.1.2005 inspite of the fact that the objection petition was submitted as back as on 11.1.2005. It appears that on 28.1.2005, the petitioner requested the executing court to pass interim order on the petitioner's application for grant of stay. The executing court observed that the petitioner made request on the date which has not been fixed in the case and no information/notice has been given to the decree holder. The Court observed that without hearing the decree-holder, no order can be passed. The court further observed that the order will be passed after hearing both the parties and fixed the stay petition along with the main file on 22.2.2005.

According to learned counsel for the petitioner, the executing court when came to know that the petitioner is in possession and he was not party in execution petition and he is resisting the execution of the decree, then the executing court should not have posted the matter to a date beyond the time by

which the decree was to be executed.

Learned counsel for the petitioner also submitted that in view of the judgments of the Hon'ble Supreme Court delivered in the cases of (1) Anwarbi vs. Pramod D.A. Joshi and others reported in (2000) 10 SCC 405 and (2) Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal and another reported in (1997) 3 SCC 694, the executing court should have stayed the execution proceedings till the decision of the petitioner's objection.

I have considered the submissions of the learned counsel for the petitioner.

It appears from the impugned order dated 28.1.2005 that the petitioner requested the executing court to pass ad-interim order on a day when the case was not fixed for that purpose. It is clear from the facts mentioned above that the petitioner submitted objection petition under Order 21 Rule 99 and 101 C.P.C. It is also clear from the above facts that the stay petition was submitted by the petitioner before the executing court only on 24.1.2005 despite the fact that the execution court rejected the petitioner's application under Section 151 C.P.C. on 10.1.2005 and the petitioner himself submitted objection petition under Order 21 Rule 99 and 101 C.P.C. immediately

thereafter on the next day itself but for the reasons best known to him did not submit the stay petition along with the objection petition or did not press for interim order and submitted the stay petition and requested the Court to pass order forthwith and the Court observed that it will not be just and proper to pass any interim order without hearing the other party – decree holder. It appears that the petitioner was under impression that in execution petition, if any objection is filed, the Court is bound to stay the execution of possession warrant without examining the merit in the case and further the court is bound to pass the order as and when the order is sought by the aggrieved party.

It will be worthwhile to quote the relevant portions from the judgments of the Apex Court in the above cited cases.

The Hon'ble Apex Court in the case of Brahmdeo (supra) observed as under :-

> "Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21, Rule 97, sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21, Rule 35 with the

help of police force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21, Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the executing court it is difficult to appreciate how the executing court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21, Rule 99 CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21, Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21, Rule 99. Order 21, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder."

In the judgment of Anwarbi (supra), the Hon'ble Supreme Court held that,

> "We, therefore make it clear that the possession of the appellant cannot be disturbed except in accordance with law; and that in view of the obstruction raised by her to the execution of the said decree, the rights of the obstructionist will have to be decided in appropriate proceedings, in accordance with law. Unless and until such proceedings terminate in favour of the decree-holder, the decree-holder cannot take possession and the appellant is entitled to retain possession."

It is true that in view of the law laid down by the Apex Court, the objection of the objector can be considered by the executing court against the possession warrant and the Court can stay the execution proceedings till the objection petition is decided by the executing court but both the judgments cannot be read to mean that in each and every case, irrespective of the merit of the claim of the objector, the executing court is bound to stay the execution proceedings or possession warrant. The above judgments also cannot be read to mean that the executing court is bound to pass ex-parte stay order simply because of the reason that someone claims that he is in possession or even found in possession of the property for which the decree has been passed, has

submitted objection petition.

It appears from the documents place on record itself that the petitioner himself was not vigilant in moving the stay petition and he did not submit the stay petition despite having knowledge of the order dated 10.1.2005 along with objection petition itself. Not only this, if the petitioner himself failed to request the court for issuing a short notice on the application which is apparent from the impugned order dated 28.1.2005, he cannot blame the court and is not entitled for stay order from this Court, looking to the petitioner's conduct in moving the executing court.

In the matter of execution of decrees passed by the competent court of law, the objector should be more vigilant and should not take it for granted that the execution of the decrees can be stayed just for asking. In case, the aggrieved party – objector himself is responsible for delaying the proceedings, then as a natural consequence, he is bound to suffer and he cannot blame the decree holder or the Court for not passing the order. There is no explanation why the petitioner did not submit the stay petition along with the objection petition on 11.1.2005 and why he did not sought fixing an early date, therefore also, there is no reason to interfere in the impugned order.

In view of the above discussion, this writ petition having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya